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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

THE COUNTY OF MARICOPA

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AZ CORP COMMISSION
DOCKET CONTROL

Theodore J. Hogan and
Christina Damitio, a married couple

Appellants

vs.

Arizona Corporations Commission, et al

Appellees

2012 APR 10 AM 10 30

Case No. CV2011-010905

Hon. John A. Buttrick

DOCKET # ACCD

No. S-20714A-09-0553

APPELLANT'S MOTION TO COMPEL APPEARANCE AND TESTIMONY
OF WITNESS JOSEPH DALE WALLER

The witness, Joseph Dale Waller and the Plaintiffs Theodore J. Hogan and Christina Damitio pursuant to the Rules of Civil Procedure, hereby move that this Court enter an order requiring the witness, Joseph Dale Waller, appear and give testimony at a deposition.

Background

On June 15th 2010, a hearing was held before the Arizona Corporations Commission in order to determine whether the defendant, Theodore J. Hogan and Christina Damitio were in violation of A.R.S. Section 44-1801(26).

Arizona Corporation Commission

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At this hearing Joseph Waller who was the resident agent with the office of Inspector General in the state of Montana for the United States Department of Interior, testified under oath as to certain hearsay evidence, which was detrimental to the defendants. An objection to the Waller testimony was entered into the record. Mr. Waller, inter alia, testified utilizing hearsay evidence which is acceptable at Corporations Commission hearings.

Appellant Theodore J. Hogan was under indictment in New Mexico, which excluded him from testifying because he refused to waive his fifth amendment rights against self-incrimination. The Arizona Corporations Commission found the defendants Theodore Hogan and Christina Diamitio responsible for the violations of the Arizona securities regulations.

An appeal from the decision of the Arizona Corporations Commission was timely filed.

An Order Compelling Joseph Waller's Appearance and Testimony is Appropriate

Mr. Waller has on several occasions attempted to prevent or delay the defendant's rights to obtain the necessary and required discovery. These instances include refusing to accept any certified mail correspondences from the defendants and any telephone calls from the parties.

When Mr. Waller was personally served with the complaint, he claimed he was not subject to the jurisdiction of the Arizona Superior Court because he was a federal employee. Mr. Waller caused this matter to be removed to the federal court for the district of Arizona. Mr. Waller was dismissed from the action upon motion from the defendants. This matter was then transferred back to the superior court of Maricopa county. All of these maneuvers have amounted to delay after delay, precluding a final solution for the parties.

An order compelling Mr. Waller to appear for deposition is appropriate and just.

Conference with Opposing Counsel

Defendants have been unable to contact Mr. Waller to discuss relief requested and Mr. Waller should be ordered to appear for this deposition.

Conclusion

For the foregoing reasons defendants request that the court enter an order requiring witness Joseph Waller to appear and give testimony at deposition on date to be selected by the defendants (see footnote 1).

Footnote 1: Of course, the defendants will attempt to confer with witness Joseph Waller in good faith effort to select a mutually agreeable date, but if no agreement can be reached, the defendant should be entitled to select the date.

The undersigned certifies that copies of this notice have been served to the following parties on the 26th of March 2012.

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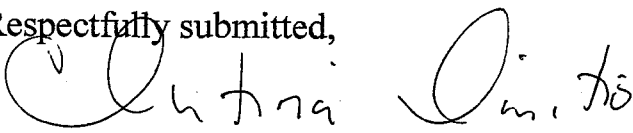
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Respectfully submitted,


CHRISTINA DAMITIO, Appellant